THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WPSS No. 295 / 2004
Rajendra Prasad
Vs
Medical Superintendent
Samudayak Swasthya Kendra
Jaspur

Approved for reporting.

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~~Not approved for reporting~~

Date of Decision 20.02.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
WRIT PETITION NO. 295 (SS) OF 2004

Rajendra Prasad Arya, S/o late Shri Mohan Ram Arya, Ward Boy Samudayak Swasthya Kendra Jaspur, Tehsil Jaspur, District Udham Singh Nagar. .....Petitioner.

Versus

1. Medical Superintendent Samudayak Swasthya Kendra, Jaspur, District Udham Singh Nagar.
2. Chief Medical Officer, District Udham Singh Nagar.
3. Secretary to the Health Department, State of Uttaranchal, Dehradun. .....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri Tumul Nailwal, learned counsel for the petitioner and learned Standing Counsel for the State.

By the present writ petition, the petitioner has prayed for a writ of mandamus directing the respondents to take the petitioner on duty at an early date.

Briefly stated according to the petitioner, he was appointed as a Ward Boy on 31.12.1983 rendering his satisfactory service to the Department with hard and honest work without giving any chance of complaint against him to his seniors, Executives and Higher Authorities and his past service record has been quite neat and clean.

According to the case of the petitioner, he started his service from 31.12.1983 and his service was confirmed on 24.05.1989 and he has completed 19 years of service.

Since the petitioner was absent from 15.03.2003 till 19.03.2003, he gave the medical certificate for extension of the leave also on account of the fact that he had gone for medical treatment as he was seriously suffering from the disease of Piles, but the respondents have not permitted him to join when he was present on duty on 01.08.2003(Annexure No. 5).

It is very painful that paragraphs no. 1 and 2 of the writ petition have not been specifically denied in the counter affidavit, but in paragraph 3 of the counter affidavit it has been mentioned that the petitioner has been in the habit of remaining absent from duty without any information and application for leave. The said paragraph 3 of the counter affidavit is quoted below:-

"3. *That the contents of para 2 of the writ petition are not admitted as set out. The petitioner has been in the habit of remaining absent from his duty without any application and information for leave. His absence without sanctioned leave is a matter of serious concern.*"

The petitioner has preferred various representations, but the said representations have not been disposed of as yet.

The petitioner has submitted that he has not been given any opportunity before passing the oral termination order and since there is no termination order on the record and from the facts of the record, which have not been disputed by the learned Standing Counsel, it appears that he has put in 20 years of service.

In view of the aforesaid facts and circumstances, since the petitioner is already out of job, it is desirable in the interest of justice that the representation of the petitioner may be disposed of within a period of 15 days from the filing of the certified copy of the order. While disposing of the representation, the respondents shall take into account the fact that the petitioner was confirmed and further he has not been given any opportunity of showing cause.

In ***Chandra Prakash Shahi Vs. State of U.P. and others, (2000) 5 SCC 152***, the Apex Court has observed as under:-

"12. *Now, it is well settled that the temporary government servants or probationers are as much entitled to the protection of Article 31 (2) of the Constitution as the permanent employees despite the fact that temporary government servants have no right to hold the post and their services are liable to be terminated at any time by giving them a month's notice without assigning any reason either in terms of the contract of service or under the relevant statutory rules regulating the terms and conditions of such service.*"

It has been held by a Division Bench of Allahabad High Court consisting of Hon'ble Mr. Justice M. Katju and Hon'ble Mr. Justice U.K. Dhaon that a temporary employee is also entitled for all benefits. It has been observed as under:-

"*The traditional concept has been that a temporary employee has no right to the post vide State of U.P. Vs. Kaushal Kishore reported in 1991 (62) FLR 350 (SC) and Triveni Shanker Saxena Vs. State etc. reported in 1992 (64) FLR 330 (SC). However, in our opinion, this traditional concept has now to stand modified in the light of the new interpretation of Article 14 of the Constitution given by the Supreme Court in the Seven Judge Constitution Bench decision in Meneka Gandhi Vs. Union of India AIR 1978 SC 597. It has been held in that decision that Article 14 is not only directed against discrimination but also against arbitrariness. Hence, in our opinion, the traditional concept that a temporary employee has no right to the post has now stands modified in view of the new interpretation of Article 14 in Meneka Gandhi's case and it can no longer be treated as an absolute concept.*"

In view of the aforesaid facts and circumstances, a writ of mandamus is issued directing the respondents to pass an appropriate order reinstating the petitioner in service within a

period of one month. However, the petitioner will not be entitled for back-wages.

Subject to the aforesaid observations, writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

20.02.2006
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